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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,494	07/26/2001	Samuel L. Forusz	70452P002	9795

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EXAMINER

PRATT, HELEN F

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/13/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/917,494

Applicant(s)

FORUSZ ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frippiat et al. or Harada et al. or Stillman in view of Christine et al. ( FR 2778849).

Frippiat et al. disclose a composition containing inulin and a second soluble fiber which is xanthan, carob, carboxymethylcellulose, carrageenan, or alginate (col. 20, lines 35-44 and lines 56-64). Harada et al. disclose a drink which contains a polyfructan which can be inulin as in claim 1 (abstract and col. 3, lines 68-70 and col. 4, lines 10-15, and lines 20-21). Stillman discloses a beverage which contains inulin and guar gum (col. 15, lines 60-66). Claim 1 differs from the references in the particular viscosity of the beverage. However, it is not seen at this time that the viscosity is not within the claimed amount because the references disclose inulin and fibers in a beverage and no concentration of inulin and fibers is given

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(col. 16, lines 35-68). Also, Christine, discloses that it is known to use a concentration of 5% arabinoxylanes (inulin) (Fig. 1 and abstract). Applicants' specification discloses the use of a concentration up to 6% of inulin (page 4, para. 0012). As the amount of inulin is known, this would have made the claimed viscosity. Therefore, it would have been obvious to use enough inulin and fibers in a beverage to obtain a particular viscosity.

Claims 2 and 3 require a particular amount of soluble fiber in the composition. However, as it is known to add fiber to beverages, it would have been within the skill of the ordinary worker to add particular amounts depending on the type of fiber. Therefore, it would have been obvious to add various amounts of fiber to a beverage.

Claim 4 further requires ascorbic acid, and claim 5, a pH of less than six. Christine et al. disclose pH's of from 3-6 (fig. 1). Ascorbic acid is a well known acidulent and nothing new is seen in its use, particularly as it is often found in fruit juices which are common beverage ingredients. Therefore, it would have been obvious to use known acids, at within the claimed pH to make a beverage.

Claims 6 and 7 further require administering the beverage for human consumption. Foods and beverages using food safe ingredients are generally considered to be used for human consumption. Therefore, it would have been obvious to administer the beverage to humans.

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Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combination of references as applied to claims 1-7 above, and further in view of Green et al. .

Claim 8 further requires that the beverage is prepared from a dried mix and claim 9 that the dry mix is mixed with water. Nothing new is seen in a beverage composition, which is in the form of a dry mix to be added to water as in KOOL-ADE (Trademark) or other dry mixes. Also, Green et al. disclose a dried mixture of fibers and oligosaccharides (abstract), which can be added to water (col. 2, lines 53-55, col. 4, lines 30-50). Therefore, it would have been obvious to add a dry fiber mixture to water to make a beverage.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 9-10-02

  
**HELEN PRATT**  
**PRIMARY EXAMINER**